



# GMS Flash Alert

## Immigration Edition

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# United States - Border Restrictions with Canada & Mexico through December 21

U.S. Customs and Border Protection (CBP) has announced that it will continue to enforce the restrictions on “non-essential” travel across U.S. land borders with Canada and Mexico **through December 21, 2020**, with possible extensions beyond this date if deemed necessary.<sup>1</sup> “Non-essential” travel generally refers to travel that is considered tourism or recreational in nature.

Restrictions on “non-essential” travel at land borders between the U.S., Canada, and Mexico were originally implemented on March 21, 2020 for a period of 30 days, and have been extended on a monthly basis since.<sup>2</sup> The restrictions are also applicable to travelers seeking admission to the U.S. via ferry and passenger rail, however **air travel continues to be unaffected at this time.**

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## WHY THIS MATTERS

Globally mobile employees traveling to the U.S. via land borders, ferries, and passenger rail must be prepared to explain how their employment or business activities in the U.S. are essential. As CBP has wide discretion to inspect those seeking entry, travelers should expect detailed questioning on their intended activities in the U.S., and should make sure they have documentation further evidencing their exemption from the border restrictions.

The border restrictions will continue to impact those who frequently travel between the U.S., Canada, and Mexico as business visitors. It may be prudent to limit business travel, if possible, to prevent complications and the possibility of being refused entry at the border, as the situation continues to be fluid and highly discretionary.

Where travel is unavoidable, travelers should confirm the state of affairs at the particular port of entry through which they would be traveling, and anticipate increased scrutiny from CBP when seeking admission to the United States.

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## “Essential Travel” Defined

The U.S., Canada, and Mexico have confirmed that normal operations and processes for entry will be limited to only those travelers engaged in “essential travel.” CBP defines “non-essential” travel as travel that is considered tourism or recreational in nature.

The Department of Homeland Security (DHS) has discretion to determine what qualifies as essential travel. Authorities can also determine that other forms of travel, such as those in furtherance of economic stability or social order, constitute essential travel. Such determinations can extend to individual humanitarian services or other purposes in the national interest. The border restrictions will also continue to not impact trade between the countries or disrupt critical supply chains that help to ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

## Exemption from Border Restrictions

The following non-exhaustive list of persons continues to be exempt from the border restrictions on U.S. entry by land, ferry, and commuter rail:

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (e.g., to receive medical treatment in the United States);
- Individuals in the Visa Waiver Program who are not otherwise subject to travel restrictions;
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States who hold valid travel documents (e.g., individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID-19 or other emergencies);
- Individuals engaged in lawful cross-border trade (e.g., truck drivers supporting the movement of cargo between the United States and Canada);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

Further communications have emphasized that those who work in a critical infrastructure industry, as defined by the DHS, have a special responsibility to maintain their normal work schedules.

## Air Travel

Air travel continues to be unaffected at this time. However, those travelling by air should anticipate additional scrutiny from CBP officers, and prepare accordingly with relevant documentation describing the critical nature of their activities in the United States.

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

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## FOOTNOTES:

1 For further information, please see the Department of Homeland Security (DHS)'s November 23, 2020 Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Services Between [the United States and Canada](#), and Between [the United States and Mexico](#).

2 For prior coverage of the U.S., Canada, and Mexico border restrictions, read the following issues of *GMS Flash Alert*: [2020-407](#) (September 23, 2020), [2020-366](#) (August 21, 2020), [2020-286](#) (June 17, 2020), [2020-240](#) (May 21, 2020), [2020-194](#) (April 23, 2020), and [2020-110](#) (March 25, 2020).

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## Contact us

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*\* Please note the KPMG International member firm in the United States does not provide immigration or labour law services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

**The information contained in this newsletter was submitted by the KPMG International member firm in Canada.**

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